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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/656,320	09/06/2000	Douglas G. Delany		9073

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EXAMINER

KARMIS, STEFANOS

ART UNIT PAPER NUMBER

3624

DATE MAILED: 02/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/656,320	Applicant(s) DELANY ET AL.	
	Examiner Stefano Karmis	Art Unit 3624	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 December 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 4-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 4-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The following communication is in response to Applicant's amendment filed 14 December 2005.

Status of Claims

2. Claim 1, 6 and 11 are currently amended. Claims 4, 5, 7, 8, 12 and 13 are previously presented. Claims 9, 10 and 14-17 are originally filed. Claims 2 and 3 are cancelled. Claims 18-20 are newly added. Therefore claims 1 and 4-20 are currently pending.

Response to Arguments

3. Applicant's arguments filed 14 December 2005 have been fully considered but they are not persuasive as discussed below. Therefore, claims 1 and 4-20 stand rejected and Applicant's request for allowance is respectfully declined.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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5. Claims 1, 6 and 11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 1, the method for billing a user is unclear. Claim 1 recites that a fee is first calculated based on an amount of time a user is logged on however it is unclear if this calculation is sent to the user or considered in the billing. Further, claim 1 states the calculation of an amount of usage and summing the calculated amount for each accessed function and later multiplying by a usage point. However, there is no limitation where a price is calculated using an amount of usage, the number of times a function is accessed and a usage point. Therefore, claim 1 is rendered indefinite because it is unclear whether the billing of the user is from the time-based calculation or from the amount of usage calculation. Further it is unclear the purpose of two calculations if only one is utilized in billing. Claims 6 and 11 contain a similar amendment to claim 1 and therefore are rejected using the same reasoning as above in claim 1.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. Claims 1 and 4-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wright U.S. Publication 2001/0027449 in view of Dialog's DialUnits: A Price Increase in Sheep's Clothing (hereinafter Dialog).

Claims 1 and 4-17 were rejected under 35 U.S.C. 103(a) as being unpatentable over Wright U.S. Publication 2001/0027449 in view of Dialog's DialUnits: A Price Increase in Sheep's Clothing (hereinafter Dialog) as discussed in the previous office action, mailed 14 September 2005. Claim 1 has been amended to include calculating a fee based on amount of time said user is logged on. Applicant contests that both Wright as well as Dialog fail to teach this limitation. The Examiner respectfully disagrees. Wright teaches typical ways in which an ISP typically bills a consumer including based on the actual time spent connected to Internet services beyond any number of contracted hours (page 1, paragraph 0004). Further, Dialog teaches a time based calculation when the Dialog compares the price of searches from the old time-based system to the newer DialUnits system (Figure 1 and accompanying text explaining the figure). Therefore, both Wright and Dialog teach calculating a fee based on an amount of

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time that a user is logged on and this argument is not persuasive. Claims 6 and 11 contain a similar amendment to claim 1 and therefore are rejected using the same reasoning as above in claim 1.

Regarding new claims 18-20, Applicant contests that Wright and Dialog fail to teach that the weight score is based on empirical data. Wright teaches that the rates are derived from a rating plan (page 2, paragraph 0028). Further Dialog teaches that DialUnits are designed to replicate the average cost for an average search of an average searcher. Therefore, both Wright and Dialog teach the use of empirical data for their rating/weight determinations and therefore Applicant's argument is not persuasive.

Claims 4, 5-10 and 12-17 remain rejected as stated in the previous office action, mailed 14 September 2005. Therefore, claims 1 and 4-20 stand rejected and Applicant's request for allowance is respectfully declined.

Conclusion

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

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will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stefano Karmis whose telephone number is (571) 272-6744. The examiner can normally be reached on M-F: 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on (571) 272-6747. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Respectfully Submitted
Stefano Karmis
20 February 2006



VINCENT MILLIN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3300